

REMARKS

Claims 1 to 13 are pending. Claim 1 has been amended. Support for the amendment may be found in the specification, for example, at pages 10 to 11. No claims have been added or canceled. No new matter is added.

Preliminarily, Applicants note that the Office Action indicates that only claims 1-12 are pending in the application. Claims 1-13 are pending in the application, though claim 13 does not appear to have been examined.

Rejections Under 35 U.S.C. § 102

Claims 1-4 and 9-11 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 5,753,296 (“the ‘296 patent”). Claims 1-11 stand rejected under 35 U.S.C. §102(e) as allegedly anticipated by 20030087937, 20040126448, and 20040191345. To the extent the rejection would be applied to the amended claims, Applicants respectfully disagree.

The office action states that the ‘296 patent describes a “high phosphatidylcholine lecithin, sugar-free, chocolate flavor aspirin.” (Office Action at 7). The ‘296 patent does not teach or suggest any of the instantly claimed active agents, however. Accordingly, the claims as amended herein are not anticipated.

Nor does the ‘296 patent render the instant claims obvious. Although the reference does suggest that an oral dissolving dosage form of aspirin may be prepared that contains cocoa powder, the reference provides no teaching or suggestion that would lead those skilled in the art to believe that cocoa-powder containing compositions could be prepared with other active ingredients, nor predict that such compositions would provide acceptable oral uptake (for example, sub-lingual or buccal) of such active ingredients.

The same may be said of the 20030087937, 20040126448, and 20040191345 applications. None of these references teach or suggest any of the agents recited in amended independent claim 1. Accordingly, the claims are not anticipated. Moreover, to the extent the Examiner would allege that the instant claims are obvious over these applications, Applicants note that each of the references were co-owned with the instant application at the time the claimed invention was made. Accordingly, the applications do not qualify as prior art for obviousness purposes, in accordance with 35 U.S.C. 103(c). MPEP §706.02.

Applicants respectfully submit, therefore, that the subject matter recited in the amended claims is neither anticipated nor rendered obvious by the cited references, and request that the rejections under 35 U.S.C. § 102 be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 1-12 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over the '296 patent in view of U.S. Patent No. 4,937,076 ("the '076 patent"). The office action alleges that the '296 patent provides all of the limitations of the claims with the exception of buffering agents and flavor enhancing agents (Office Action, at page 11, paragraph 4). The '076 patent is alleged to supply the missing buffer agents and flavor enhancing agents, and the office action alleges it would be obvious to combine these two references.

To the extent the rejection would be applied to the amended claims, Applicants respectfully disagree. As set forth above, the '296 patent does not teach or suggest the claimed agents. The '076 patent does not remedy the deficiencies of the '296 patent because the '076 patent also fails to teach or suggest the recited agents. Because the cited references, alone or in combination, do not teach or suggest all of the limitations of the claimed invention, it is respectfully submitted that a *prima facie* case for obviousness has not been established.

Rejections for Obviousness-Type Double Patenting

Claims 1-11 stand provisionally rejected for alleged obviousness-type double patenting over U.S. Application Nos. 11/561,650 (20070092554), 11/561,539 (20070122456), 10/816,673 (20040191345), 10/271,186 (20030087937), and 10/634,159 (20040126448). The office action states that present claims are not patentably distinct from the claims of these various copending applications. Applicants respectfully request reconsideration of these rejections in view of the claim amendments made herein.

CONCLUSION

The foregoing represents a *bona fide* attempt to advance the present case to allowance. Applicants respectfully submit that the claims are now in condition for allowance. A Notice of Allowance is respectfully requested.

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